

No. R. 941

25 July 2002

LABOUR RELATIONS ACT, 1995 (ACT NO 66 OF 1995)**SECTION 189A(6) REGULATIONS**

I, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister of Labour, hereby, under section 189A(6) of the Labour Relations Act, 1995 (Act No. 66 of 1995), and after consultation with NEDLAC; hereby issue the regulations in the Schedule hereto.

M M S MDLADLANA

MINISTER OF LABOUR

REGULATIONS FOR THE CONDUCT OF FACILITATIONS IN TERMS OF SECTION 189A

1. How to request facilitation

- (1) A request for facilitation in terms of section 189A(3) must be made by submitting a completed LRA 7.20 form to the Commission.
- (2) A request in terms of subregulation (1) must be served and filed in accordance with the Commission's rules.

2. Notice of first meeting of facilitation

- (1) Not later than seven days after receiving a notice in terms of regulation 2, the Commission must notify the parties in writing of -
 - (a) the name of the facilitator; and
 - (b) after consulting the parties, the date of the first facilitation meeting.
- (2) A notice in terms of subregulation (1) must be issued at least seven days before the date of the first facilitation meeting.
- (3)
 - (a) The parties may agree to appoint a facilitator other than the facilitator named in the notice given in terms of subregulation (1).
 - (b) The Commission is not liable to pay the fees of a facilitator appointed by agreement between the parties.
- (4) The date of the first facilitation meeting set in terms of subregulation (1) may be changed by agreement between all the parties and the facilitator.

3. Conduct of first facilitation meeting

- (1) The facilitator must at the first facilitation meeting assist the parties to reach an agreement on -
 - (a) the procedure to be followed during the facilitation;
 - (b) the date and time of additional facilitation meetings; and
 - (c) the information the employer is required to disclose in terms of section 189(3)(a) and when that information must be disclosed.
- (2) A matter dealt with in subregulation (1) may be dealt with in any additional facilitation meetings that are held.

4. Powers and duties of a facilitator

- (1) Unless the parties agreed otherwise, the facilitator may –
 - (a) chair the meeting between the parties;
 - (b) decide any issue of procedure that arises in the course of meetings between the parties;
 - (c) arrange further facilitation meetings after consultation with the parties;
 - (d) direct that the parties engage in consultations without the facilitator being present.
- (2) A decision by a facilitator in respect of any matter concerning the procedure for conducting the facilitation, including the date and time of meetings, is final and binding.
- (3) By agreement between the parties, the facilitator may perform any other function.

5. Power to order disclosure of information

- (1) If there is a dispute about the disclosure of information the facilitator may, after hearing representations from the parties, make an order directing an employer to produce documents that are relevant to the facilitation.
- (2) Sections 189(4)(b) and 16(5) and (10) to (14) of the Act, read with the changes required by the context, apply to any dispute concerning the disclosure of information in terms of subregulation (1).

6. Facilitation meetings

- (1) A facilitator must conduct up to four facilitation meetings with the parties, unless the dispute is settled in a lesser number of meetings or the parties agree to a lesser number of meetings.
- (2) The Director, after consulting the facilitator, may increase the number of meetings that a facilitator must conduct with the parties.
- (3) The number of meetings specified in subregulation (1) does not include any meetings convened for the purpose of the facilitator arbitrating a dispute over the disclosure of information.

7. Status of facilitation proceedings

- (1) A facilitation is conducted on a with prejudice basis.

- (2) Despite subregulation (1), the parties may agree in writing that a part of the facilitation be conducted on a without prejudice basis.
- (3) The part of the facilitation conducted on a without prejudice basis may not be disclosed in any court proceedings.
- (4) No person may call a facilitator to give any evidence on any aspect of a facilitation in any legal proceedings.

8. Panel of facilitators

- (1) The Commission must maintain a panel of facilitators consisting of commissioners and other persons.
- (2) A person may only be placed on the panel of facilitators that person has proven knowledge, experience and expertise in conciliation, mediation or facilitation of labour relations disputes.

9. Referral of dispute to Labour Court

A dispute in terms of section 189A(7)(b)(ii) must be referred to the Labour Court within 90 days of the notice of termination or, if no notice is given, within 90 days of the dismissal.

10. Agreement

If employees who are likely to be affected by a proposed dismissal are represented in a facilitation by more than one consulting party, an agreement must be concluded by the consulting parties representing the majority of the employees concerned, for purposes of section 189A(2) of the Act or these regulations.

11. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Labour Relations Act, 1995 (Act No. 66 of 1995) shall bear such meaning, unless the context indicates otherwise –

“Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995), and includes any regulation made in terms thereof;

“Commission” means the Commission for Conciliation, Mediation and Arbitration established by section 112 of the Act;

“Commission’s rules” means the Rules for the Conduct of Proceedings before the CCMA; and

"Facilitator" means a facilitator appointed in terms of section 189A(3) of the Act.

12. Short title

These regulations are known as the Facilitation Regulations, 2002.